

# House File 145 - Introduced

HOUSE FILE 145

BY ISENHART

## A BILL FOR

- 1 An Act allowing the formation of certain for-profit
- 2 corporations as benefit corporations authorized to do
- 3 business in this state under certain conditions.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   **490.1801   Application of subchapter**  
 2 **— definitions.**

3     1. If a corporation elects to become a benefit corporation  
 4 under this subchapter in the manner prescribed in this  
 5 subchapter, it is subject in all respects to the provisions  
 6 of this chapter, except to the extent this subchapter imposes  
 7 additional or different requirements, in which case such  
 8 requirements apply. The inclusion of a provision in this  
 9 subchapter does not imply that a contrary or different rule of  
 10 law applies to a corporation that is not a benefit corporation.  
 11 This subchapter does not affect a statute or rule of law that  
 12 applies to a corporation that is not a benefit corporation.

13     2. As used in this subchapter:

14     *a. "Benefit corporation"* means a corporation that includes  
 15 in its articles of incorporation a statement that the  
 16 corporation is subject to this subchapter.

17     *b. "Public benefit"* means a positive effect, or reduction of  
 18 negative effects, on one or more communities or categories of  
 19 persons or entities, other than shareholders solely in their  
 20 capacity as shareholders, or on the environment, including  
 21 effects of an artistic, charitable, economic, educational,  
 22 cultural, literary, medical, religious, social, ecological, or  
 23 scientific nature.

24     *c. "Public benefit provision"* means a provision in the  
 25 articles of incorporation which states that the corporation  
 26 shall pursue one or more identified public benefits.

27     *d. "Responsible and sustainable manner"* means a manner that  
 28 does all of the following:

29         (1) Pursues through the business of the corporation the  
 30 creation of a positive effect on society and the environment,  
 31 taken as a whole, that is material taking into consideration  
 32 the corporation's size and the nature of its business.

33         (2) Considers, in addition to the interests of  
 34 shareholders, the interests of stakeholders known to be  
 35 affected by the conduct of the business of the corporation.

1     Sec. 2. NEW SECTION.   **490.1802   Name — share certificates.**

2     1. The name of a benefit corporation may contain the  
3 words "benefit corporation", the abbreviation "B.C.", or the  
4 designation "BC", any of which shall be deemed to satisfy the  
5 requirements of section 490.401, subsection 1, paragraph "a".

6     2. Any share certificate issued by a benefit corporation,  
7 and any information statement delivered by a benefit  
8 corporation pursuant to section 490.626, subsection 2,  
9 must note conspicuously that the corporation is a benefit  
10 corporation subject to this subchapter.

11    Sec. 3. NEW SECTION.   **490.1803   Certain amendments and**  
12 **transactions — votes required.**

13    1. Unless the articles of incorporation or bylaws require  
14 a greater vote, the approval of at least two-thirds of the  
15 voting power of the outstanding shares of the corporation  
16 entitled to vote thereon, and, if any class or series of shares  
17 is entitled to vote as a separate group on any such amendment  
18 or transaction, the approval of at least two-thirds of the  
19 outstanding shares of each such separate voting group entitled  
20 to vote thereon, shall be required for a corporation that is  
21 not a benefit corporation to do any of the following:

22    a. Amend its articles of incorporation to include a  
23 statement that it is subject to this subchapter.

24    b. Merge with or into, or enter into a share exchange with,  
25 another entity, or effect a domestication or conversion, if,  
26 as a result of the merger, share exchange, domestication, or  
27 conversion, the shares of any voting group would become, or be  
28 converted into or exchanged for the right to receive, shares  
29 of a benefit corporation or shares or interests in an entity  
30 subject to provisions of organic law analogous to those in  
31 this subchapter; provided, however, that in the case of this  
32 paragraph "b", if the shares of one or more, but not all,  
33 voting groups are so affected, then only the shares in the  
34 voting groups so affected shall be entitled to vote under this  
35 subsection.

1     2. Unless the articles of incorporation or bylaws require a  
2 greater vote, the approval of at least two-thirds of the voting  
3 power of the outstanding shares of the corporation entitled  
4 to vote thereon and, if any class or series of shares is  
5 entitled to vote as a separate group on any such amendment or  
6 transaction, the approval of at least two-thirds of the voting  
7 power of the outstanding shares of each such separate voting  
8 group, shall be required for a benefit corporation to do any  
9 of the following:

10     a. Amend its articles of incorporation to eliminate a  
11 statement that the corporation is subject to this subchapter.

12     b. Merge with or into, or enter into a share exchange with,  
13 another entity, or effect a domestication or conversion if,  
14 as a result of the merger, share exchange, domestication, or  
15 conversion, the shares of any voting group would become, or be  
16 converted into or exchanged for the right to receive, shares or  
17 interests in an entity that is neither a benefit corporation  
18 nor an entity subject to provisions of organic law analogous to  
19 those in this subchapter; provided, however, that in the case  
20 of this paragraph "b", if the shares of one or more, but not  
21 all, voting groups are so affected, then only the shares in the  
22 voting groups so affected shall be entitled to vote under this  
23 subsection.

24     3. The vote required under subsections 1 and 2 is in  
25 addition to any vote otherwise required under this chapter.

26     Sec. 4. NEW SECTION. **490.1804 Duties of directors.**

27     1. Each member of the board of directors of a benefit  
28 corporation, when discharging the duties of a director, shall  
29 act according to all of the following:

30     a. In a responsible and sustainable manner.

31     b. In a manner that pursues the public benefit or benefits  
32 identified in any public benefit provision.

33     2. In fulfilling the duties under subsection 1, a director  
34 shall consider, to the extent affected, in addition to the  
35 interests of shareholders generally, the separate interests

1 of stakeholders known to be affected by the business of the  
2 corporation including all of the following:

3     *a.* The employees and workforces of the corporation, its  
4 subsidiaries, and its suppliers.

5     *b.* Customers.

6     *c.* Communities or society, including those of each community  
7 in which offices or facilities of the corporation, its  
8 subsidiaries, or its suppliers are located.

9     *d.* The local and global environment.

10     3. A director of a benefit corporation shall not, by virtue  
11 of the duties imposed by subsections 1 and 2, owe any duty to a  
12 person other than the benefit corporation due to any interest  
13 of the person in the status of the corporation as a benefit  
14 corporation or in any public benefit provision.

15     4. Unless otherwise provided in the articles of  
16 incorporation, the violation by a director of the duties  
17 imposed by subsections 1 and 2 shall not constitute an  
18 intentional infliction of harm on the corporation or the  
19 shareholders for the purposes of sections 490.202, subsection  
20 2, paragraphs "d" and "e".

21     Sec. 5. NEW SECTION. **490.1805 Annual benefit report.**

22     1. No less than annually, a benefit corporation shall  
23 prepare a benefit report addressing the efforts of the  
24 corporation during the preceding year to operate in a  
25 responsible and sustainable manner, to pursue any public  
26 benefit or benefits identified in any public benefit provision,  
27 and to consider the interests described in section 490.1804,  
28 subsection 2. The annual benefit report must include all of  
29 the following:

30     *a.* The objectives that the board of directors has  
31 established for the corporation to operate in a responsible and  
32 sustainable manner, to pursue any public benefit or benefits  
33 identified in any public benefit provision, and to consider the  
34 interests described in section 490.1804, subsection 2.

35     *b.* The standards the board of directors has adopted

1 to measure the corporation's progress in operating in a  
2 responsible and sustainable manner, in pursuing the public  
3 benefit or benefits identified in any public benefit provision,  
4 and in considering the interests described in section 490.1804,  
5 subsection 2.

6     *c.* If the articles of incorporation or bylaws require  
7 that the corporation use an independent third-party standard  
8 in reporting on the corporation's progress in operating in a  
9 responsible and sustainable manner, in pursuing any public  
10 benefit or benefits identified in any public benefit provision,  
11 or in considering the interests described in section 490.1804,  
12 subsection 2, or if the board of directors has chosen to use  
13 such a standard, the applicable standard so required or chosen.

14     *d.* An assessment of the corporation's success in meeting  
15 the objectives and standards identified in paragraphs "a" and  
16 "b", and, if applicable, paragraph "c", and the basis for that  
17 assessment.

18     2. The benefit corporation shall deliver to each  
19 shareholder, or make available and provide written notice to  
20 each shareholder of the availability of, the annual benefit  
21 report required by subsection 1 on or before the earlier of the  
22 following:

23     *a.* One hundred twenty days following the end of the fiscal  
24 year of the benefit corporation.

25     *b.* The time that the benefit corporation delivers any  
26 other annual reports or annual financial statements to its  
27 shareholders.

28     3. Any shareholder that has not received or been given  
29 access to an annual benefit report within the time required by  
30 subsection 2 may make a written request that the corporation  
31 deliver or make available the annual benefit report to the  
32 shareholder. If a benefit corporation does not deliver or make  
33 available an annual benefit report to the shareholder within  
34 five business days of receiving such request, the requesting  
35 shareholder may apply to the district court of the county

1 where the corporation's principal office or, if none in this  
2 state, its registered office, is located for an order requiring  
3 delivery of or access to the annual benefit report. The court  
4 shall dispose of an action under this subsection 3 on an  
5 expedited basis.

6 4. A benefit corporation shall post all of its annual  
7 benefit reports on the public portion of its internet site,  
8 if any. If a benefit corporation does not have an internet  
9 site, the benefit corporation shall provide a copy of its most  
10 recent annual benefit report, without charge, to any person  
11 that requests a copy in writing.

12 Sec. 6. NEW SECTION. 490.1806 Rights of action.

13 1. Except in a proceeding authorized under section  
14 490.1805, subsection 3, or this section, no person other  
15 than the corporation, or a shareholder in the right of the  
16 corporation pursuant to subsection 2, may bring an action  
17 or assert a claim with respect to the violation of any duty  
18 applicable to a benefit corporation or any of its directors  
19 under this subchapter.

20 2. Except for a proceeding brought under section 490.1805,  
21 subsection 3, a proceeding by a shareholder of a benefit  
22 corporation claiming violation of any duty applicable to  
23 a benefit corporation or any of its directors under this  
24 subchapter is subject to all of the following:

25 a. The proceeding must be brought in a derivative proceeding  
26 pursuant to subchapter VII, part 4.

27 b. The proceeding may be brought only by a shareholder  
28 of the benefit corporation that at the time of the act or  
29 omission complained of either individually, or together with  
30 other shareholders bringing such action collectively, owned  
31 directly or indirectly at least five percent of a class of  
32 the corporation's outstanding shares or, in the case of a  
33 corporation with shares traded on an organized market as  
34 described in section 490.1302, subsection 2, paragraph "a",  
35 subparagraph (2), either that percentage of shares or shares

1 with a market value of at least five million dollars at the  
2 time the proceeding is commenced.

3 3. A suit under subsection 2 shall not be maintained if,  
4 during the pendency of the suit, the shareholder individually  
5 fails, or the shareholders collectively fail, to continue to  
6 own directly or indirectly the lesser of the number of shares  
7 owned at the time the proceeding is commenced or five percent  
8 of a class of the corporation's shares.

9

EXPLANATION

10 The inclusion of this explanation does not constitute agreement with  
11 the explanation's substance by the members of the general assembly.

12 This bill amends the "Iowa Business Corporation Act"  
13 codified in Code chapter 490 by creating a new subchapter  
14 allowing for the creation of benefit corporations. A benefit  
15 corporation is an entity formed as a corporation but requires  
16 directors to consider, in addition to shareholder interests,  
17 the social, environmental, and other effects of corporate  
18 activity, and allows business decisions to be based on such  
19 effects, even where those decisions may be contrary to the  
20 financial interests of shareholders (new Code sections 490.1801  
21 through 490.1806). In order to become or stop from being a  
22 benefit corporation, the articles of incorporation must be  
23 amended by a two-thirds vote of all outstanding shares of the  
24 corporation entitled to vote on the question (new Code section  
25 490.1803). A benefit corporation is required to prepare  
26 an annual benefit report that addresses the efforts of the  
27 corporation during the preceding year, which may be based on a  
28 third-party standard (new Code section 490.1805).